IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

WP(C).No. 36159 of 2003(D)

PETITIONER:

BINDU GANESH, "KRISHNAPRIYA",
PARANEZHUTHU VADAKKATHIL, PUTHUKADU,
P.O. CHAVARA, KOLLAM.

BY ADV. SRI.C.UNNIKRISHNAN (KOLLAM),
ADV. SRI.S.HARIKRISHNAN.

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY ITS SECRETARY, SC & ST DEVELOPMENT DEPARTMENT, SECRETARIAT, TRIVANDRUM.**

2. **THE TAHSILDAR, KARUNAGAPPALLY.**

3. **THE KERALA STATE COMMISSION FOR BACKWARD CLASSES, THIRUVANANTHAPURAM, REPRESENTED BY ITS REGISTRAR.**

4. **THE DISTRICT OFFICER, KERALA PUBLIC SERVICE COMMISSION, DISTRICT OFFICE, CORPORATION BUILDING, ANDAMUKKAOM, KOLLAM.**

BY SPL. GOVT. PLEADER SRI. P. SANTHOSH KUMAR FOR R1 TO R3,
ADV. SRI. P.C. SASIDHARAN, SC, FOR R4.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/08/2007, ALONG WITH W.P.(C). NO. 2001/2004 AND CONNECTED CASES, THE COURT ON 18/08/2007 DELIVERED THE FOLLOWING:-

W.P.(C). NO.36159/2003:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE FRONT PAGE OF SSLC BOOK OF THE PETITIONER.

EXT.P.2: COPY OF THE LETTER NO. C-3.22664/2003 DTD. 10/11/2003 ISSUED BY THE R.2.

EXT.P.3: COPY OF THE LIST OF OBC'S VIDE G.O. (MS) 498/64 DTD. 03/08/1964 ISSUED BY THE R.1.

EXT.P.4: COPY OF THE LIST OF BACKWARD CLASSES PUBLISHED IN G.O. (P) 208/66 DTD. 02/05/1966.

EXT.P.5: COPY OF THE KERALA GAZZATTE NO.29 DTD. 22/07/1975.

EXT.P.6: COPY OF THE ORDER NO. 13/77 DTD. 23/04/1977 ISSUED BY TH P.S.C.

EXT.P.7: COPY OF THE REPORT DTD. 22/03/95 SUBMITTED BY KIRTADS.

EXT.P.8: COPY OF THE G.O. (MS). NO. 77/98/SCSTDD DTD. 10/08/98 ISSUED BY THE R.1.

EXT.P.9: COPY OF THE G.O. (MS) 6/91/SCSTDD DTD. 11/02/91 ISSUED BY THE R.1.

EXT.P.10: COPY OF THE INTERIM ORDER DTD. 29/10/2003 IN W.P.(C).33968/2003 OF THIS HONOURABLE COURT.

EXT.P.11: COPY OF THE ADVICE TENDERED TO THE GOVT. BY THE KERALA STATE COMMISSION FOR BACKWARD CLASSES.

RESPONDENT'S EXHIBIT:

EXT. R1.A: G.O. (P) NO. 36/2000 SC/ST DD DTD. 27/05/00.

//TRUE COPY//

P.A. TO JUDGE

prv.

THOTTATHIL B.RADHAKRISHNAN, J.

W.P(C).No.36159 OF 2003, O.P.Nos.17231 OF 2000,
8516 OF 2001, 3058 OF 2002,
W.P(C).Nos. 37584 OF 2003 & 2001 OF 2004

Dated this the 18th day of August, 2007

JUDGMENT

"C.R."

These writ petitions are filed challenging G.O(NC)No. 77/98/SCSTDC dated 10.8.1998, whereby, the Government acted on the advice tendered to it by the Kerala State Commission for Backward Classes, hereinafter referred to as the 'Commission', on the question of inclusion of the 'Chakkala Nair' community in the State list for Other Backward Classes, for reservation purpose.

2. The thrust of the contentions advanced in these writ petitions, at the time of final hearing can be encapsulated as follows:

(i) The Commission erred in relying on the opinion of the Ananthakrishna Iyer International Centre for Anthropological Studies, hereinafter referred to as 'AICAS',

and ignoring the report of the Kerala Institute of Research, Training and Development Studies on Scheduled Castes and Tribes(KIRTADS).

(ii) The reliance placed on the report of AICAS and the prominence given to Dr.P.R.Govindankutty Mathur as a special invitee to assist the Commission are wholly unfounded and against public interest because, Dr.Mathur was earlier held by the Government to have misrepresented facts in relation to an issue of caste status of 'Thandans' and as per G.O.(MS) 6/91/SCSTDD dated 11.2.1991, the Government had reduced his pension after he retired as Special Officer of KIRTADS.

(iii) 'Chakkala Nair' is a community which ought to be treated as 'Chakkala' and the advice to the contrary, tendered by the Commission and the consequential Government Order are contrary to law and the materials on record.

3. In support of the impugned decisions, the learned Special Government Pleader argued that on the basis of the materials on record, the impugned decisions cannot be found fault with and that a reading of the advice of the Commission would show that the report of KIRTADS as well as AICAS and the other different materials produced before the Commission were taken into consideration in making the advice.

4. Learned Standing Counsel for the Kerala Public Service Commission pointed out that no challenge having been specifically pleaded and urged regarding the findings in para 33 of the impugned advice that the representation of the employees belonging to the community in question would show that the rate of representation is indeed very high, the impugned decision cannot be found fault with because, adequacy of representation in different services is the criterion to make a reservation.

5. Before entering on to adjudicate on the basis of the contentions advanced, it needs to be noticed that the Commission is constituted under the provisions of the Kerala State Commission for Backward Classes Act, 1993, to examine the request for inclusion of any class of citizens as a backward class in the list, to hear the complaints of over-inclusion of any backward class in such list and to tender such advice to the Government, if it deems appropriate. Section 10 provides different powers of the Commission while performing its functions. It shall have all the powers of a civil court in trying a suit and in particular, in respect of the matters enumerated therein. Sub-section 2 of Section 9 of that Act provides that the views and findings of the Commission shall ordinarily be binding upon the Government.

6. Section 11 of the Act, of which specific note has to be taken, provides that the Government may, at any time, and shall at the expiry of 10 years from the coming into force of the Act and every succeeding period of 10 years thereafter, undertake

revision of the lists with a view to exclude from such lists the particular classes who have ceased to be Backward Classes or for including any such class in the lists of Backward Classes. The Government are to consult the Commission for such purpose. In view of the aforesaid statutory provision, it has to be noticed that the over all intention is to assess and identify those classes which are to be treated as backward classes and the purview of the consideration is normally a span of 10 years. This is because, continued inclusion could be subjected to periodic revision every 10 years while necessity to inclusion is also a matter that could be considered. So much so, the consideration of the Commission while making an advice to the Government, is not merely to be an exercise of reading out of the entire history of a particular community and confining itself to an anthropological study. The result of the entire exercise has to be to reach at a conclusion whether a particular class is to be treated as a backward class for the purpose of being included in the list or for letting such a class to continue in the list, for

which, the representation that the said class has in public service, has also to be taken into consideration.

7. The advice made by the Commission in the case in hand was generated on the basis of seven associations claiming to be organisations of Chakkala Nairs, the names of which organisations are enumerated in the opening paragraph of the impugned advice. None of those organizations has challenged either the advice or the Government Order which runs contrary to the claims made by them. The advice contains the undisputed fact that due publicity was given to the scheduled hearing through the press, inviting objections to or comments on the inclusion of Chakkala Nair in the list of OBC for reservation in public service. None among the petitioners has a case that he participated in the proceedings before the Commission pursuant to such public notice. The provisions made in the Act are for the constitution of the Commission to take care of the responsibility of advising the Government after considering all aspects of a particular matter. So much so, when the Commission has made

the advice after considering the materials placed before it and after public notice, I do not deem it appropriate to let the advice to be subjected to judicial scrutiny at the instance of individuals, who had not chosen to participate in proceedings before the Commission, particularly when none among the organisations, seven in number in the case in hand, has chosen to challenge the advice made by the Commission to the Government or to challenge the Government decision that followed the advice of the Commission.

8. Be that as it may, adverting to the arguments raised, it has to be noticed at the outset that the report of KIRTADS has been taken note of by the Commission. The argument to the contrary is unsustainable. The KIRTADS' report contained in letter dated 22.3.1995, addressed by its Director to the Government, has been rightly treated by the Commission as a document which is not a report of any fact finding study, but a compilation of very useful extracts about the community in question, culled from the works of authors who have made special studies of that

caste group. The Commission specifically noticed that KIRTADS has not made any field study. The Commission, headed by a former Judge of this Court and by members in terms of the provisions of the Act, has categorically stated that the Commission had made use of the report of KIRTADS also to arrive at a conclusion. I find no material to overrule that.

9. The criticism of Dr.Mathur that the Government had found that he had wrongly advised the Government on an earlier incident is correct. But the fact remains that he, at that time, was essentially heading KIRTADS. He was made a special invitee by the Commission and the AICAS report was also considered by the Commission. It is not as if the Commission relied exclusively on the AICAS report or on the statement of Dr.Mathur. Even if any comment that Dr.Mathur had made is eschewed, it can be seen that the Commission acted on various materials, including the oral evidence of different witnesses and the views of the KIRTADS, along with AICAS survey report.

10. Incidentally, it has to be mentioned that it was attempted to be pointed out on behalf of the petitioners that the Accountant General has criticized the expenditure shown to have incurred by AICAS in conducting the survey and that the Government had explained about it to the Accountant General. Those matters are irrelevant and do not really go to the root of the reliability of the advice tendered by the Commission, which has been acted upon by the Government, particularly when no case of personal bias or malice is attributed to the members of the Commission. Nor is there any plea of ill-constitution or incompetence of the Commission.

11. The conclusion of the Commission was that Chakkala Nairs are educationally and economically poor, but that they had enjoyed the benefit by reaping the quota that was available to Chakkalas and that, as of now, the representation of Chakkala Nairs in the various services of the State Government reflects that their rate of representation is indeed very high. The

following statement is made by the Commission in para 33 of the advice on the basis of the statistics collected by the Commission.

> "Of the 187 departments/Autonomous Bodies/Public Sector Undertaking in respect of which data are available, they had representation in 68. The total number of employees belonging to this community is 575, comprising top level (1), gazetted (40), middle level (2), non-gazetted (365), last grade (102) and workmen (65)."

12. The aforesaid factual findings of the Commission, on statistics, are not challenged by the petitioners. Therefore, even if Chakkala Nair has been identified as educationally and economically poor, the advice of the Commission to the Government that the community Chakkala Nair does not satisfy the requirements and the criteria involved to identify backward class of citizens, cannot be found fault with. Equally, the impugned decision of the Government cannot also be interfered with.

13. A further fact that is not in dispute is that the PSC, while issuing notification, included 'Chakkala Nair' within brackets along with 'Chakkala' in the list of Other Backward Classes and such action of the PSC was without the authority of the Government. So much so, any action of the PSC on the basis of which the 'Chakkala Nair' community had also enjoyed certain benefits that were extended to 'Chakkala', cannot be claimed as a matter of right and by the Government Order, the situation has been appropriately settled.

14. For the aforesaid reasons, I find no ground to interfere either with the advice of the Commission or with the decision of the Government.

In the result, these writ petitions fail and are hence dismissed. No costs.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

W.P(C).No.36159 OF 2003,
O.P.Nos.17231 OF 2000,
8516 OF 2001, 3058 OF 2002,
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AUGUST, 2007.

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